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ABSTRACT

This booklet presents the texts of the Model State Subsidized Adoption Act and Model Regulations. Comments which expand and explain most sections of the Act are included. Subsidized adoption provides reimbursement (after a child with special needs has been placed for adoption) according to a prior agreement between the adoptive parent(s) and the social agency. The agreement is to be tailored to the child's needs and may allow for a specific medical, legal or other cost. It can be a monthly reimbursement for a limited time or for an indefinite period. Provisions of the Act include purpose, eligibility, administration and funding, the subsidy agreement, and appeals. The Act is meant to be read in conjunction with the Model Regulations which amplify and particularize the provisions of the Act. (ED)

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Model State Subsidized Adoption Act and Regulations

PS 008381

Foreword

The history of adoption practices in this country has generally reflected our assumption that each child is the total responsibility of his or her parents. In the course of typical adoptions of healthy white infants, there has been little reason to re-examine this notion --that is, until recently. Now we face an increasing number of children with special needs who are available for adoption but for whom we are unable to find adoptive homes. These are the children with physical, mental, or emotional handicaps, children of various minority groups, older children, and sibling groups. As an unintended but very real consequence of our assumption, hundreds of children are relegated to institutional care or the uncertainties of foster family care at substantial cost to the States and at immeasurable but immense human cost to the children.

In recognition of these unfortunate circumstances, the relatively new idea of subsidized adoption has developed as a way to help qualified families assume permanent responsibility for these special children. Subsidized adoption provides reimbursement after a child has been placed for adoption, according to a prior agreement between the adoptive parent(s) and the social agency. Such an agreement is tailored to the child's needs, and may allow for a specific medical, legal, or other cost; a monthly reimbursement for a limited time; a monthly reimbursement for an indefinite period.

The Model State Subsidized Adoption Act and the accompanying Model Regulations contained herein are intended to contribute to the achievement of a most important goal of the Children's Bureau in the Office of Child Development, within the Office of Human Development: the improvement of the quality of services to those children requiring care away from their families. The development of these models was undertaken by Sanford N. Katz, Professor of Law, Boston College Law School, as project director of an OCD/CB grant to the Child Welfare League of America.

Over 1,500 people were involved in the preparation of these documents. Ad hoc working committees met to consider the many issues, including representatives of States, the Child Welfare League of America, the American Academy of Pediatrics, the National Conference of Commissioners on Uniform State Laws, the National Association for the Advancement of Colored People, the National Urban League, the National Bar Association, the American Bar Association, the National Council of Juvenile Court Judges, the Black Child Development Institute, adoptive parents, as well as Indian, Puerto Rican, and Black citizens and representatives of other minority groups. The models contained herein, however, do not necessarily represent consensus among these individuals.

Stanley B. Thomas, Jr.
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Human Development
Department of Health, Education, and Welfare

MODEL STATE SUBSIDIZED ADOPTION ACT

An act to establish a permanent program authorizing public subsidies which will make it possible for children in special circumstances to be adopted.

Section 1. /Purpose./ The purpose of this Act is to supplement the /State/ adoption statutes by making possible through public financial subsidy the most appropriate adoption of each child certified by the /Department of Social Services/ as requiring a subsidy to assure adoption.

Comments

The Model State Subsidized Adoption Act must be read in conjunction with the Model Regulations. Together they constitute an indivisible unit. The Regulations amplify and particularize the provisions of the Act.

The aim of the Act is to establish within the /Department of Social Services/ a permanent adoption subsidy program for children certified by the /Department of Social Services/ as eligible for subsidy. It is not intended as a substitute for existing adoption programs but as an addition. Its scope is broad enough to include children under the care of either public or licensed private agencies.

Section 2. /Definition of "child."/ As used in this Act, except as otherwise required by the context, "child" means a minor as defined by /State/ statute, who is (a) a dependent of a public or voluntary licensed child-placing agency, (b) legally free for adoption, and (c) in special circumstances either (1) because he has established significant emotional ties with prospective adoptive parents[1/] while in

1/ As used in this Act and Comments, "parents" represents either one or two parents.

their care as a foster child, or (2) because he is not likely to be adopted by reason of one or more conditions, such as:

1. Physical or mental disability,
2. Emotional disturbance,
3. Recognized high risk of physical or mental disease,
4. Age,
5. Sibling relationship,
6. Racial or ethnic factors, or
7. Any combination of these conditions.

Comments

To come within the Act, the child to be subsidized (defined as a minor by /State/ law) must be under the legal jurisdiction of a public or voluntary licensed agency and legally free for adoption. The Act enumerates the special circumstances in which the child must be situated in order to be eligible for subsidy certification. He must be either: (1) presently in the care of a foster family with whom he has developed and maintained a plainly evidenced positive emotional bond and who seek to adopt him; or (2) he must be difficult to place in a permanent adoptive home because of one or more of the conditions listed above in the Section.

The list of conditions describes the eligible child as:

1. Under a physical or mental disability. For example, he is suffering from some disease or illness or has been born with such physical or mental defects as to make ordinary or non-subsidized adoptive homes unavailable for him. Or,

2. Suffering from an emotional disturbance, the cause of which is irrelevant. Or,

3. Known to be in a category of high risk of either physical or mental disease. For instance, if it is known that the child has suffered some injury at birth which may manifest itself later in some form of disability, this would constitute a recognized high risk of physical disability. Or if at placement the child is known to be suffering from a physical disease carrying a mental or emotional component which has not yet appeared, the child would be included in a high risk category. Although this category is intended to give wide latitude to decision-makers, "recognized high risk" is limited to disease or disability and does not include social, environmental or status factors. Because a child is born out of wedlock, for example, does not make him a high risk child in spite of the social stigma that attaches to this status. Or,

4. Difficult to place because of age. A specific age is not stated because of widely varying conditions in different areas of the country. Whether his age is three or seven is irrelevant so long as it is a factor in the child's not being placed in an ordinary adoptive home. Or,

5. Difficult to place because of sibling relationship, i.e., fraternal membership in a family group. It is now considered sound casework practice to try to place siblings together. Or,

6. Difficult to place because of racial or ethnic factors. These factors are also left general because they depend on geographic area and social climate. Racially mixed infants, for instance, were once difficult to place in any home; at the present time they are desirable. A similar change has occurred with Indian children. At one time it was felt necessary to initiate specific programs to attract adoptive parents for these children. They are now sought after by non-Indian adoptive applicants, but many Indian tribes no longer allow such placements. Or,

7. Difficult to place through any combination of the above. This category is meant to point up that a "condition" may not be exclusive of another condition.

Section 3. /Administration and Funding./ The /Department of Social Services/ shall establish and administer an ongoing program of subsidized adoption. Subsidies and services for children under this program shall be provided out of funds appropriated to the /Department

of Social Services/ for the maintenance of children in foster care or made available to it from other sources.

Comments

This section empowers the appropriate /State/ department to devise an adoption subsidy program. By "ongoing" is meant a regular and continuous program in contrast to a pilot or a time-limited project.

Funding for subsidized adoption is to be provided through State monies allocated to the appropriate department. Since the subsidized adoption program is designed to be a part of existing child welfare services, rather than a special category, it should be given the same standing as regular adoption and foster care.

Where the appropriate department can obtain funding from voluntary or other public sources for the adoption subsidy program, these sources should be utilized.

Section 4. /Eligibility./ Whenever significant emotional ties have been established between a child and his foster parents, and the foster parents seek to adopt the child, the child shall be certified as eligible for a subsidy conditioned upon his adoption under applicable /State/ adoption procedures by the foster parents.

In all other cases, after reasonable efforts have been made and no appropriate adoptive family without the use of subsidy has been found for a child, the /Department of Social Services/ shall certify the child as eligible for a subsidy in the event of adoption.

If the child is the dependent of a voluntary licensed child-placing agency, that agency shall present to the /Department of Social Services/ (1) evidence of significant emotional ties between the child and his foster parents or (2) evidence of inability to place the child for adoption due to any of the conditions specified in Section 2 of this Act. In the latter case, the agency shall present evidence that reasonable efforts have been made to place the child without subsidy, such as recruitment of potential parents, use of adoption resource exchanges, and referral to appropriate specialized adoption agencies.

Comments

The Act recognizes that most beneficiaries of existing subsidy programs are children who have been adopted by their foster parents. Under the Act such a child, when he is legally free for adoption and under the jurisdiction of a public or licensed voluntary agency, shall be certified for a subsidy when the foster parents seek to adopt him, there is clear evidence of a significant emotional bond between them and the child, and a home study has shown that the foster parents are suitable adoptive parents. In such circumstances the foster parents are assumed to be the most appropriate adoptive parents, and there is no necessity for searching out other possible adoptive families for this child.

The philosophy of the text is that the needs of the child provide the basis for the subsidy. Therefore the financial ability of the family to meet the child's needs is not a condition for certification for the subsidy.

When persons other than the foster parents seek to adopt the child, before certifying the child for a subsidy, agencies must make reasonable efforts to secure adoptive parents without subsidizing the child. For example, the agency record might indicate on what dates and for how long the child was placed on adoption resource exchanges, when contacts were made with specialized adoption agencies, and what recruitments without subsidy for the child were attempted among potential adoptive parents.

Section 5. /Subsidy Agreement./ When parents are found and approved for adoption of a child certified as eligible for subsidy, and before the final decree of adoption is issued, there must be a written agreement between the family entering into the subsidized adoption and the /Department of Social Services./ Adoption subsidies in individual cases may commence with the adoption placement or at the appropriate time after the adoption decree, and will vary with the needs of the child as well as the availability of other resources to meet the child's needs. The subsidy may be for special services only, or for money payments, and either for a limited period, or for a long term, or for any combination of the foregoing. The amount of the time-limited or long-term subsidy may in no case exceed that which would be allowable from time to time for such child under foster family care, or, in the case of a special service, the reasonable fee for the service rendered.

When subsidies are for more than one year, the adoptive parents shall present an annual sworn certification that the adopted child remains under their care and that the condition(s) that caused the child to be certified continue(s) to exist. The subsidy agreement shall be continued in accordance with its terms but only as long as the adopted child is the legal dependent of the adoptive parents and the child's condition continues, except that, in the absence of other appropriate resources provided by law and in accordance with /State/ regulations, it may be continued after the adopted child reaches majority. Termination or modification of the subsidy agreement may be requested by the adoptive parents at any time.

A child who is a resident of this /State/ when eligibility for subsidy is certified shall remain eligible and receive subsidy, if necessary for adoption, regardless of the domicile or residence of the adopting parents at the time of application for adoption, placement, legal decree of adoption or thereafter.

All records regarding subsidized adoption shall be confidential and may be disclosed only in accordance with the /relevant provisions of the State adoption act./

Comments

The written contract for subsidy is to be negotiated prior to the actual adoption placement and becomes effective either at the time of placement or after the adoption decree has been issued. A subsidy that commences with the placement may be for special services like those referred to in the Regulations.

The Regulations define and describe time-limited and long-term subsidies. The reference to the ceiling of the subsidy to accord with foster family allowances is based on current practice. One of the features of the adoption subsidy program is to provide children in foster care with permanent adoptive homes at no more cost to the State than foster care.

Under the text, the adoptive parents have the responsibility for certifying to the /Department of Social Services/ that the subsidized child remains in their care. The adoptive parents are the initiating parties in certification. They are not asked to disclose their financial situation.

Some conditions, e.g., physical or mental disability, may be alleviated in time and no longer exist. Other conditions, e.g., ethnic factors, age, or emotional ties with his adoptive parents, necessarily continue unchanged. The subsidy will not be continued after the condition ends.

No fixed age has been set for terminating the subsidy, although in the great majority of cases the age of majority should be determinative. Flexibility is necessary to allow children to complete schooling, for example, before the subsidy is cut off. Also, since some children under the program will need special care, treatment and services for an indeterminate period, the termination of the subsidy at the age of majority would work a hardship for them.

Since the subsidy is designed to provide a child in special circumstances with a permanent adoptive home, the fact that the child has been adopted out of State or that the adoptive family moves out of the State should not affect the continuity of the subsidy.

Records in the subsidized adoption program should be maintained with the same confidentiality as other adoption records. The privacy of parents and children under the program should be afforded the same respect as in other adoptions.

Section 6. /Appeals./ Any subsidy decision by the /Department of Social Services/ which the placement agency or the adoptive parents deem adverse to the child shall be reviewable according to the provisions of the /State administrative procedure./

Section 7. /Promulgation of Regulations./ The /Department of Social Services/ shall promulgate Regulations consistent with this Act within /_____/ days of its enactment.

Section 8. /Short Title./ This Act should be known and may be cited as the /State/ Subsidized Adoption Act.

Section 9. /Effective Date./ This Act shall take effect on /_____./

MODEL REGULATIONS
FOR
STATE SUBSIDIZED ADOPTION ACT

DEFINITION AND SCOPE

Subsidized adoption is an ongoing program within the /Department of Social Services/ intended to make adoption possible for children who otherwise may not be adopted. It is designed as a supplement to the /State/ adoption statutes and as an effective addition to regular recruitment efforts. It is meant to provide the benefits of family security, love and nurture for children in special circumstances, presently under the care of public or voluntary licensed agencies. These special circumstances may be (a) the establishment of significant emotional ties between the child and his foster parents or (b) the difficulty of adoption because of the child's condition as cited in Section 2 of the Act. The subsidized adoption program is funded through and administered by the /Department of Social Services./

The child may be subsidized for special services only, or for money payments, and either for a limited period, or for a long term, or for any combination of the foregoing. The time-limited or long-term subsidy may not exceed the amount allowable from time to time for a child in a foster family or, for a special service, the customary fee for such service. The duration of a long-term subsidy may extend until the adoptive parents' legal responsibility ceases or in particular cases after the child reaches majority if other appropriate provisions are absent and if /State/ regulations are satisfied.

A. AGREEMENT

Where a subsidy is to be provided, a written agreement for subsidy between the /Department of Social Services/ and the prospective adoptive parents, with clearly delineated terms, must precede the adoption decree. The provisions should be explained verbally to the prospective adoptive parents who, after a period for study and consultation, shall sign the agreement jointly with the /Department of Social Services./ The parents will retain one copy, and the other strictly confidential copy should be kept in the files of the /Department of Social Services./ The agreement must include the date for the commencement of the subsidy, which will be either at the time of the adoptive placement or after the adoption decree, depending on the needs of the child. The adoptive parents may request termination or modification of the subsidy agreement at any time.

B. TYPES OF SUBSIDY

1. Special Service Subsidy is limited to the time span of the necessary service. It may be a one-time payment for an anticipated expense when there is no other resource. It may include, among other costs:

(a) Legal and court costs of adoption.

(b) Other costs incidental to adoptive placement, e.g., preplacement visits.

(c) Special medical costs: In the case of a child with a known medical condition which will require treatment or surgery after placement for adoption or after the adoption decree, investigation must be made of the adopting family's medical insurance and of other public and voluntary community services (such as Crippled Children's Services and Medicaid) to

determine whether the costs of the treatment and related costs can be covered by one or more of them. Where costs for treatment and related expenses cannot be covered or can be only partially covered by insurance and by other community services, the subsidy agreement shall provide for the necessary funds for the treatment required after adoptive placement or after the adoption decree. If, because of genetic background or other medical history, there is a recognized high risk that physical or mental disease may later develop, the agreement shall include provision of funds, if not otherwise available, for treatment of such disease.

(d) Costs of other special services such as physio-, psycho-, or occupational therapy, remedial education, rehabilitation training, extraordinary corrective dental treatment, speech and hearing therapy, wheel chairs, braces, crutches, prostheses, day care, transportation, and any other expenses related to the care and treatment of the child under this and paragraph (c).

2. Time-Limited Subsidy is a periodic payment for a specified time span after adoptive placement or after the legal completion of the adoption. It is designed to help with the expenses of integrating the child into the family or to provide needed funds for a specified length of time.

3. Long-Term Subsidy is designed for children who cannot be adopted unless their long-term financial needs are met by subsidy. The periodic payments may continue until the child reaches majority or, in particular cases, beyond the child's majority if other appropriate resources are absent and if /State/ regulations are met.

C. AMOUNT OF SUBSIDY

1. Time-Limited and Long-Term Subsidies: Neither time-limited nor long-term money payment subsidies may exceed the rate as established by the /Department of Social Services/ for care in foster family homes. The money payment subsidies shall be automatically adjusted whenever foster family care rates are changed.

2. Special Service Subsidies: Reimbursement or prepayment for special services will be limited to the reasonable fee customary in the community where such services are rendered.

D. SPECIAL CONSIDERATIONS

1. Before a child is certified for subsidy, resources for adoptive placement without subsidy should be explored, including recruitment of adoptive parents, registration for a reasonable period on local, State and national adoption resource exchanges, and referral to appropriate specialized adoption agencies. Registration with the exchanges is unnecessary when:

(a) The current foster family or other qualified person(s), including relatives with whom the child has been living and with whom he has established significant emotional ties have expressed interest in adopting the child, or

(b) It can be demonstrated that such resources are unlikely to result in an adoption without subsidy and their use would cause unreasonable delay in placement for adoption.

2. If the child has or may have eligibility for Indian benefits, it may be necessary to negotiate special terms with the United States Bureau of Indian Affairs or the relevant tribal court.

E. ELIGIBILITY FOR AND CONTINUITY OF SUBSIDY

1. The /Department of Social Services/ shall establish forms and procedures for initial certification of eligibility and for periodic certification of the child's continued need for subsidy in accordance with Section 2 of the Act.

2. The means of periodic certification will be a sworn statement by the adoptive parents submitted to the /Department of Social Services/ that the child is presently in their custody and that the condition(s) that caused the child to be certified continue(s) to exist.

(a) Upon sworn certification by the parents, the agreement shall be automatically renewed.

(b) As long as the need for subsidy is certified, the subsidy shall be continued while the child is the legal dependent of the adoptive parents, or even in certain instances after the child reaches majority if other appropriate provisions are unavailable and when /State/ regulations are met.

(c) If the parents certify that the child's circumstances have changed, the agreement may be modified to allow for increase, reduction or termination while the child is in the adoptive parents' custody.

(d) A child who is a resident of /this State/ when certified by the /Department of Social Services/ as eligible for subsidy shall remain eligible and receive a subsidy regardless of the domicile or residence of the adopting parents at the time of their approval for adoption, placement, or legal decree of adoption

(whichever applies) and thereafter.

F. SUBSIDY FOR A CHILD UNDER THE CARE OF A LICENSED VOLUNTARY AGENCY

A child under the care of a licensed voluntary agency must meet the same requirements for subsidy as those in the care of a public agency. The licensed voluntary agency must refer the case to the /Department of Social Services/ for certification of eligibility for a subsidy. After the referral the voluntary agency will continue its supervisory responsibility for the child and the family until after the adoption decree has been issued. If after reviewing the circumstances of the case, the /Department of Social Services/ approves a subsidy plan, it will draft and sign jointly with the adoptive parents an agreement for the necessary special services and funding. The /Department of Social Services/ will be the administrator of the subsidy agreement according to its regulations and the terms of the Act.

G. TRAINING

In addition to other appropriate handbook material, the /Department of Social Services/ will set up a continuing subsidized adoption training program for staffs of both public and private agencies. The program will include the purposes and procedures of the subsidized adoption program and the methods for recruiting adoptive applicants. In conjunction with adoptive parents of children with physical, mental or emotional problems, the /Department of Social Services/ will prepare a voluntary educational program for the children's care and nurture as well as their future needs.

H. APPEALS PROVISION

The /Department of Social Services/ shall develop procedures for appeals that are in accordance with the State's administrative procedures law and are also consistent with the appeals provision of the Act.